

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

JIMMY L. KIRKWOOD,

Plaintiff,

Vs.

Case No.: _____

**RAYMOND HARPER and
MIES & SONS TRUCKING, LLC,**

Defendants.

COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL

Plaintiff, Jimmy L. Kirkwood, by counsel, and for his Complaint for Damages against Defendants, Raymond K. Harper and Mies & Sons Trucking, LLC, states as follows:

I.

PARTIES AND JURISDICTION

1. Plaintiff, Jimmy L. Kirkwood, resides in Kosciusko County, Indiana at 883 South Caleb Ct., Warsaw, IN 46580.
2. Upon information and belief, Defendant, Raymond K. Harper (“Harper”), is a professional truck driver who resides in Greeley County, Kansas at 405 East Wichita St., Tribune, KS 67879.
3. Upon information and believe, Defendant, Mies & Sons Trucking, LLC (“Mies & Sons”), is a Kansas limited liability company with its principle place of business located at 19620 West 85th North, Colwich, KS 67030-9624.

4. In addition, Mies & Sons is an authorized interstate motor carrier operating under United States Department of Transportation number 618032 and motor carrier authority docket number MC-382079.

5. The Court has jurisdiction under 28 U.S.C. § 1332 based on diversity as Plaintiff and Defendants are citizens of different states and the amount in controversy exceeds the sum or value of \$75,000.

II.

FACTS

6. On or about September 1, 2020, Plaintiff was travelling northbound on Interstate-69 (“I-69”), in lane one, near mile marker 233, in Delaware County, Indiana.

7. At approximately the same time and approximately the same location, Harper, while in the course and scope of his employment and/or agency with Mies & Sons, was operating a semi-tractor trailer combination (the “Tractor-Trailer”) northbound on I-69 in lane two, when he changed lanes, from lane two to lane one, and collided with Plaintiff’s vehicle.

8. Harper carelessly and negligently failed to maintain a proper lookout for vehicles traveling northbound on I-69.

9. Harper carelessly and negligently failed to change, alter, or divert the course of the Tractor-Trailer so as to avoid colliding into Plaintiff’s vehicle.

10. Harper carelessly and negligently failed to apply and/or maintain application of the brakes of the Tractor-Trailer in time to avoid colliding into Plaintiff’s vehicle.

11. Harper carelessly and negligently failed to sound any signal or warning of his approach.

12. Harper carelessly and negligently failed to restrict his speed as was necessary to avoid causing an accident.

13. Harper carelessly and negligently crossed into Plaintiff's lane.

14. Harper carelessly and negligently created an undue risk of harm to Plaintiff.

15. At all times relevant, Plaintiff was exercising reasonable care in operating his vehicle.

16. As a direct and proximate result of the carelessness and negligence of the Defendant, Plaintiff sustained serious and permanent personal injuries; has incurred extreme pain and suffering, medical expenses, medical bills, emotional distress, and lost wages; and expects to incur future medical expenses, lost wages, and other damages.

III.

FIRST CAUSE OF ACTION

Negligence of Defendant Raymond Harper

17. Paragraphs 1 through 16 are incorporated by reference thereto.

18. Harper had a duty to drive the Tractor-Trailer in a safe and reasonable manner, to obey all traffic laws, to identify other vehicles on the road, including Plaintiff's vehicle, and to maintain the proper lane of traffic and/or change lanes of traffic in a safe manner.

19. On September 1, 2020, Harper failed in the above-mentioned duties and therefore is negligent.

20. The incident and all the injuries and damages set forth herein suffered by Plaintiff are the direct and proximate result of the negligent and careless conduct of Harper as set forth above and as follows:

- a. In failing to keep the Tractor-Trailer under control so as to avoid colliding into Plaintiff's vehicle;
- b. In failing to maintain a proper lookout for vehicles traveling northbound on I-69;
- c. In failing to change, alter, or divert the course of the Tractor-Trailer so as to avoid colliding into Plaintiff's vehicle;
- d. In failing to apply and/or maintain application of the brakes of the Tractor-Trailer in time to avoid colliding into Plaintiff's vehicle;
- e. In failing to sound any signal or warning of his approach;
- f. In failing to restrict his speed as was necessary to avoid causing an accident;
- g. In carelessly and negligently changing lanes; and
- h. In creating an undue risk of harm to Plaintiff.

21. As a direct and proximate result of the carelessness and negligence of the Harper, Plaintiff sustained serious and permanent personal injuries; has incurred extreme pain and suffering, medical expenses, medical bills, emotional

distress, and lost wages; and expects to incur future medical expenses, lost wages, and other damages.

WHEREFORE, Plaintiff prays for judgment against the Defendant, Raymond K. Harper, in an amount commensurate with the injuries and damages, for costs of this action, and for all other relief just and proper in the premises.

IV.

SECOND CAUSE OF ACTION

Vicarious Liability of Defendant Mies & Sons Trucking, LLC

22. Paragraphs 1 through 21 are incorporated by reference thereto.

23. At all relevant times, Harper was the employee, agent, servant, or independent contractor for Mies & Sons. Accordingly, Mies & Sons is vicariously liable for the acts of Harper described in the cause of action and allegations above.

24. Regardless of the employment or agency relationship, Mies & Sons is an interstate motor carrier and registered owner of USDOT# 618032 displayed on the Tractor-Trailer and is therefore responsible for the acts of the Defendant driver, Harper.

WHEREFORE, Plaintiff prays for judgement against the Defendant, Mies & Sons Trucking, LLC, in an amount commensurate with the injuries and damages, for costs of this action and for all other relief just and proper in the premises.

V.

THIRD CAUSE OF ACTION

Negligence of Defendant Mies & Sons Trucking, LLC

25. Paragraphs 1 through 24 are incorporated by reference thereto.

26. Mies & Sons had a duty to act reasonably in hiring, instructing, training, supervising and retaining all drivers operating under its federal motor carrier operating authority and other employees and agents, including Harper, and to promulgate and enforce policies, procedures, and rules to ensure that its drivers and vehicles were reasonably safe.

27. Mies & Sons had a duty to place reasonably safe vehicles on the public roadways and to make sure that such vehicles were maintained in a reasonably safe manner so that the brakes and other equipment work safely and properly.

28. Mies & Sons had a duty to exercise reasonable care in entrusting its vehicles and equipment to responsible, competent and qualified drivers.

29. Mies & sons failed in the above-mentioned duties and was therefore negligent.

30. As a direct and proximate result of the carelessness and negligence of Mies & Sons, Plaintiff sustained serious and permanent personal injuries; has incurred extreme pain and suffering, medical expenses, medical bills, emotional distress, and lost wages; and expects to incur future medical expenses, lost wages, and other damages.

WHEREFORE, Plaintiff prays for judgement against the Defendant, Mies & Sons Trucking, LLC, in an amount commensurate with the injuries and damages, for costs of this action and for all other relief just and proper in the premises.

VI.

JURY TRIAL REQUEST

Plaintiff, by counsel, requests that this case be tried by jury.

Respectfully submitted,

BECK ROCKER & HABIG, LLC

/s/ Eric K. Habig

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